

107TH CONGRESS
2D SESSION

S. 1914

To amend title 49, United States Code, to provide a mandatory fuel surcharge for transportation provided by certain motor carriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2002

Mr. KERRY (for himself and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to provide a mandatory fuel surcharge for transportation provided by certain motor carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Motor Carrier Fuel
5 Cost Equity Act of 2002”.

6 **SEC. 2. MANDATORY FUEL SURCHARGE.**

7 (a) IN GENERAL.—Chapter 137 of title 49, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 13714. Fuel surcharge**

2 “(a) MANDATORY FUEL SURCHARGE.—

3 “(1) ESTABLISHMENT OF SURCHARGE.—Any
 4 contract or agreement providing for truckload trans-
 5 portation or service involving a motor carrier,
 6 broker, or freight forwarder subject to jurisdiction
 7 under chapter 135 of this title who regularly pro-
 8 vides such transportation or service shall include a
 9 requirement to assess a payer of transportation
 10 charges, and a requirement for the payer of trans-
 11 portation charges to pay, a minimum surcharge for
 12 the amount of the increase in the price of fuel used
 13 in the transportation provided to such payer com-
 14 mencing when the current price of diesel fuel sur-
 15 passes, by \$0.05 per gallon, the benchmark price set
 16 forth in paragraph (2). The surcharge assessed by
 17 the motor carrier, broker, or freight forwarder shall
 18 be calculated on the basis of mileage or percentage
 19 of revenue (whichever basis the motor carrier,
 20 broker, or freight forwarder elects) and shall be the
 21 amount necessary to compensate the person respon-
 22 sible for paying for fuel for the amount of increase
 23 in the cost of fuel.

24 “(2) BENCHMARK PRICE.—The benchmark
 25 price referred to in paragraph (1) shall be \$1.10 per
 26 gallon.

1 “(3) CURRENT FUEL PRICE.—The current price
2 of diesel fuel applicable under paragraph (1) to a
3 shipment transported as described in that paragraph
4 shall be the latest weekly average price for retail on-
5 highway diesel fuel published by the Energy Infor-
6 mation Administration for the district or subdistrict
7 of the Petroleum Administration for Defense in
8 which the shipment is physically tendered to the
9 motor carrier, broker, or freight forwarder.

10 “(4) INCREASE IN THE COST OF FUEL.—The
11 increase in the cost of fuel referred to in paragraph
12 (1) and section 13715 of this title shall be an
13 amount determined by subtracting the benchmark
14 price from the current price of diesel fuel.

15 “(b) IMPLEMENTATION.—The surcharge referred to
16 in subsection (a)(1), with respect to a shipment trans-
17 ported by a motor carrier, broker, or freight forwarder,
18 shall be—

19 “(1) calculated on the date the shipment is
20 physically tendered to the motor carrier, broker, or
21 freight forwarder;

22 “(2) itemized separately on the motor carrier,
23 broker, or freight forwarder’s invoices; and

1 “(3) paid to the motor carrier, broker, or
2 freight forwarder by the payer of transportation
3 charges.

4 “(c) CALCULATION OF SURCHARGE ON THE BASIS OF
5 MILEAGE.—For purposes of calculating a surcharge on
6 the basis of mileage under this section—

7 “(1) it shall be assumed that a gallon of fuel
8 is used for each 5 miles of transportation; and

9 “(2) mileage means the number of miles
10 invoiced as determined under the Department of De-
11 fense, Military Traffic Management Command’s ‘De-
12 fense Table of Official Distances’ or mileage guide
13 established pursuant to section 13703(a)(1)(D).

14 “(d) LIMITATION ON AUTHORITY.—Notwithstanding
15 any other provision of this part, neither the Secretary nor
16 the Board shall have regulatory or enforcement authority
17 relating to provisions of this section and section 13715
18 of this title. The payer of fuel costs or any party to a
19 transportation contract or agreement may bring an action
20 for declaratory and injunctive relief and damages in an
21 appropriate State court or United States district court
22 against any party to a transportation contract or agree-
23 ment for an act or omission of that party in violation of
24 this section or section 13715 of this title or both.

1 **“§ 13715. Negotiated fuel adjustments**

2 “(a) IN GENERAL.—Nothing in section 13714 of this
3 title shall be construed to abrogate provisions relating to
4 fuel cost adjustments in any transportation contract or
5 agreement in effect on the date of the enactment of the
6 Motor Carrier Fuel Cost Equity Act of 2001 or any re-
7 newal of such a contract or agreement thereafter. Nothing
8 in this section or section 13714 or 14102(c) of this title
9 shall be construed to prohibit any motor carrier, broker,
10 or freight forwarder from including any privately nego-
11 tiated fuel cost adjustment provision in any contract or
12 agreement to provide transportation that is not less than
13 the amount necessary to compensate the person respon-
14 sible for paying for fuel for the amount of increase in the
15 cost of fuel.

16 “(b) CONTINUATION OF AUTHORITY.—Nothing in
17 section 13714 of this title shall impair the ability of any
18 person to enter into any contract or agreement after the
19 date of the enactment of the Motor Carrier Fuel Cost Eq-
20 uity Act of 2001 that provides for a fuel adjustment under
21 this section or section 13714 of this title during any period
22 in which no fuel surcharge is required under section 13714
23 of this title.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of such chapter is amended by adding
26 at the end the following:

“13714. Fuel surcharge.

“13715. Negotiated fuel adjustments.”.

1 **SEC. 3. MANDATORY PASS-THROUGH TO COST BEARER.**

2 Section 14102 of title 49, United States Code, is
3 amended by adding at the end the following:

4 “(c) MANDATORY PASS-THROUGH TO COST BEAR-
5 ER.—

6 “(1) IN GENERAL.—A motor carrier, broker, or
7 freight forwarder providing transportation or service
8 using motor vehicles not owned by it and using fuel
9 not paid for by it—

10 “(A) shall pass through to the person re-
11 sponsible for paying for fuel any fuel surcharge
12 collected by the motor carrier, broker, or freight
13 forwarder pursuant to section 13714 of this
14 title or provided for in transportation contracts
15 or agreements;

16 “(B) shall disclose in writing to the equip-
17 ment lessor and lessee the amount of all freight
18 rates and charges and fuel surcharges applica-
19 ble to such transportation or service; and

20 “(C) may not—

21 “(i) intentionally reduce compensatory
22 transportation costs (other than the fuel
23 surcharge) to the person responsible for
24 paying for fuel for the purpose of adjusting

1 for or avoiding the pass-through of the fuel
2 surcharge; or

3 “(ii) intentionally impose a fuel cost
4 adjustment in accordance with section
5 13715 of this title for the purpose of
6 avoiding any payment under this section or
7 section 13714 of this title.

8 “(2) LIMITATION ON AUTHORITY.—Notwith-
9 standing any other provision of this part, neither the
10 Secretary nor the Board shall have regulatory or en-
11 forcement authority relating to provisions of this
12 subsection. The payer of fuel costs or any party to
13 a transportation contract or agreement may bring
14 an action for declaratory and injunctive relief and
15 damages in an appropriate State court or United
16 States district court against any party to a transpor-
17 tation contract or agreement for an act or omission
18 of that party in violation of this subsection.”.

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